This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

California

Workmen's Compensation Laws: Effective Jan. 1914

HDI
HL 38JA Z

S
US/CA
357.7
E14

HARVARD
LAW
LIBRARY

Digitized by Google

Bd. Oct. 1930

HARVARD LAW LIBRARY

GIFT OF

Workmen's Compensation Publicity Bureau

Received Apr. 24, 1914

Digitized by Google

Digitized by Google

Digitized by Google

Workmen's Compensation Laws

of the

STATE OF CALIFORNIA

Roseberry Employers' Liability Act
Effective September 1, 1911
Workmen's Compensation, Insurance and
Safety Act of 1913
Effective January 1, 1914

Digitized by Google

Digitized by Google

California. Laws, statutes, etc. Workmen's compensation law

Workmen's Compensation Laws

of the

State of California

S
US/CA
357.7
F14

Digitized by Google

Copyright, 1914, by
F. ROBERTSON JONES
New York

APR 24 1914
Workmen's Compensation
Publicity Bureau

Digitized by Google

CONTENTS.

	PAGES.
Introductory	5-11
Workmen's Compensation Law	13-63
Roseberry Employer's Liability Act	65-79

Digitized by Google

Digitized by Google

INTRODUCTORY.

Except as to employment in farm labor and domestic service, the Roseberry Employers' Liability Act, which went into effect September 1, 1911, has been superseded by the so-called Boynton Workmen's Compensation Act, which takes effect January 1, 1914.

The new act is a broad measure relating to compensation, insurance and industrial safety. It establishes an Industrial Accident Commission, to be composed of three members, to administer its compensation features, to maintain a mutual insurance fund and to administer its provisions relative to safety.

The new act applies to all employments, including the State and all its governmental agencies, and all private employments in the ordinary course of the trade, business, profession or occupation of the employer, except farm labor, domestic service and casual employment. The Roseberry Act of 1911 is not repealed; and employments in farm labor and domestic service therefore continue to be covered by that act.

The compensation liability defined by the new act is intended to be compulsory, but the intention is not very clearly expressed. The compensation remedy is exclusive, except where there is gross negligence or wilful misconduct on the part of the employer.

Compensation is payable for every injury caused by accident arising out of and in the course of employment, unless due to intoxication or wilful misconduct, and is payable generally on a sixty-five per cent basis, with fixed maximum and minimum limitations, and for varying periods of time, depending upon the nature of the disability.

Insurance is optional, but compensation insurance is subjected to many regulations. Every policy must provide that the insurer shall be directly liable to the employee, that notice to the insured shall be notice to the insurer, that the insolvency of the insured shall not relieve the insurer, etc. There are also provisions for substituting the insurer in place of the insured in proceedings for compensation, and subrogating the insurer to the rights of the insured. If a policy is limited, that fact must be conspicuously stated on the face of the policy. No policy may insure the employer against liability for gross negligence or wilful misconduct; and if in case of such liability an insurer has to pay compensa-

Digitized by Google

tion to an injured employee, the insurer is subrogated to the rights of such employee as against the insured.

A State Compensation Insurance Fund is established, to be supervised and administered by the Industrial Accident Commission, which is given wide powers and discretion with regard thereto. But after a reasonable time in which to become established, the fund is to be "fairly" competitive with other insurance carriers and its rates must be so fixed as to provide full reserves.

The text of the new law, preceded by a brief analysis outlining its compensation features, and followed by the text of the Roseberry Act of 1911, is here given:

SYSTEM PROVIDED FOR.

Compulsory (intended) system of compensation, supervised and administered by the Industrial Accident Commission, consisting of three members, with a State Insurance Fund managed by said Commission.

EMPLOYMENTS COVERED.

All employments, public or private, except employments both casual and not in the ordinary course of the trade, business, etc., of employer, farm labor and domestic service (Sec. 14), and also except such employments in interstate commerce as are not subject to the legislative power of the State (Sec. 86).

INJURIES COVERED.

Those caused by accident arising out of and in the course of employment, unless due to intoxication or wilful misconduct (Sec. 12).

SUITS FOR DAMAGES.

Only when the employer is guilty of gross negligence or wilful misconduct, in which case the employee may, at his option, either claim compensation under the act or sue at law for damages. Otherwise the compensation remedy under the act is exclusive (Sec. 12).

SPECIAL CONTRACTS.

No contract, rule or regulation, shall exempt the employer from liability for compensation under the act.

No release of liability or settlement agreement is valid unless

Digitized by Google

it provides for the payment of full compensation under the act, or until and unless approved by the Commission (Sec. 32).

INSURANCE.

Any employer covered by the act may insure his liability in a mutual or other company, or he may provide some other arrangement with his employees for the payment of compensation under the act. An injured employee may recover directly of the insurer. And every policy must provide that the insurer shall be directly liable to the employee, that notice to the insured shall be notice to the insurer, that the employee shall have a first lien upon any amount owing on account of such policy to the employer, and that the insolvency of the insured shall not relieve the insurer, etc. The insurer may be substituted in place of the insured in any proceedings for compensation, and any insurance carrier paying compensation or assuming the liability of the employer therefor, may be subrogated to all the rights and duties of the employer. If a policy is limited, that fact must be conspicuously stated upon its face. No policy may insure the employer against liability for gross negligence or wilful misconduct, and any insurance carrier liable therefor shall be subrogated to the rights of the employee as against the employer (Secs. 34 and 35).

The act establishes a State Compensation Insurance Fund, to be managed by the Industrial Accident Commission, which commission is given wide powers and discretion. This Fund must, after a reasonable time in which to become established, be so managed as to compete "fairly" with other insurance carriers, and its rates must be so fixed as to provide full reserves (Secs. 36-50).

WAITING PERIOD.

To be compensated, disability must continue for more than two weeks. Compensation begins on the fifteenth day after the injured employee leaves work as a result of the injury (Sec. 15).

NOTICE TO EMPLOYER OF ACCIDENT.

No claim for compensation under the act can be maintained unless written notice, stating the essential details concerning the accident, is served upon the employer within thirty days after the accident. But actual notice on the part of the employer or his agent is equivalent to such service. Failure to give notice, or any

Digitized by Google

defect or any inaccuracy therein, shall not bar a recovery under the act if it is found as a fact that there was no intention to mislead or prejudice the employer, and that he was not in fact misled or prejudiced thereby (Sec. 20).

COMPENSATION FOR DEATH.

Compensation for death is payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, as follows: (1) If there are total dependents, a sum sufficient, when added to the disability indemnity accrued and payable at the time of death, to make the total disability indemnity and death benefit equal to three times the average annual earnings, such annual earnings to be taken at not less than $333.33 nor more than $1,666.66; (2) if there be no total dependents but only partial dependents, such percentage of three times such average annual earnings of the deceased as the annual amount devoted by him to the support of the partial dependents bears to such average annual earnings; but such sum, when added to the disability indemnity accrued and payable at the time of death must not exceed three times the average annual earnings, such earnings to be taken at not less than $333.33 nor more than $1,666.66; (3) if there are no dependents, reasonable burial expenses not exceeding $100 in amount (Sec. 15).

Those persons conclusively presumed to be wholly dependent for support upon a deceased employee are: (1) Wife upon a husband with whom she was living at time of death, (2) husband upon wife upon whose earnings he was partially or wholly dependent at time of death, (3) child or children under 18 years (or over said age but physically or mentally incapacitated) upon the parent with whom he or they were living at the time of death of such parent, there being no surviving parent. In all other cases the question of dependency is determined in accordance with the fact as at the time of death. No one is considered a dependent unless a member of the family of the deceased or unless one who bears to him the relation of husband or wife, child, parent, grandparent, father-in-law or mother-in-law, brother or sister, nephew or niece (Sec. 19).

Proceedings for compensation in case of death must be commenced within one year from the date of death, and can only be maintained when it appears that death ensued within one year from the date of accident, or that the accident causing death also caused disability which continued to the date of the death and for

Digitized by Google

which a disability indemnity was paid, agreed to be paid, or for the collection of which proceedings were commenced within the time limited in such cases (Sec. 16).

COMPENSATION FOR TOTAL DISABILITY.

When disability is temporary but total, compensation is 65 per cent of average weekly earnings during the period of such disability, but the aggregate indemnity for a single injury must not exceed three times the average annual earnings, nor must the period extend beyond 240 weeks from the date of accident.

Where the disability is total and permanent, compensation is 65 per cent of the average weekly earnings for a period of 240 weeks, and thereafter 40 per cent of such earnings during the remainder of life.

Loss of both eyes or the sight thereof, loss of both hands or the use thereof, an injury resulting in a practically total paralysis or an injury to the brain resulting in incurable imbecility or insanity are considered as total permanent disability (Sec. 15).

COMPENSATION FOR PARTIAL DISABILITY.

Where disability is temporary and partial, compensation is 65 per cent of the weekly loss in wages during the period of such disability, but the aggregate indemnity must not exceed three times the average annual earnings of the employee, nor must the period extend beyond 240 weeks from the date of accident.

Where the disability is partial but permanent, the percentage of disability and the disability indemnity are computed and allowed as follows: For a 10 per cent disability, 65 per cent of average weekly earnings during 40 weeks; for a 20 per cent disability, 65 per cent during 80 weeks; for a 30 per cent disability, 65 per cent during 120 weeks; for a 40 per cent disability, 65 per cent during 160 weeks; for a 50 per cent disability, 65 per cent during 200 weeks; for a 60 per cent disability, 65 per cent during 240 weeks; for a 70 per cent disability, 65 per cent during 240 weeks, and thereafter 10 per cent of such earnings during the remainder of life; for an 80 per cent disability, 65 per cent during 240 weeks, and thereafter 20 per cent of such earnings during the remainder life; for an 80 per cent disability, 65 per cent during 240 weeks, and thereafter 30 per cent of such earnings during the remainder of life (Sec. 15).

Digitized by Google

MEDICAL AND SURGICAL AID.

Employer must furnish reasonable medical, surgical and hospital treatment for a period not exceeding 90 days. If the employer neglects or refuses seasonably so to do, he will be liable for the reasonable expenses incurred by the employee in providing the same (Sec. 15).

RIGHT OF MEDICAL EXAMINATION.

Employee must submit to, from time to time, upon written request of employer. He may have his own physician present at his own expense. Right to compensation is suspended during the continuance of refusal or obstruction after request by employer, and barred after obstruction or refusal to submit when ordered by the Commission or any member thereof (Sec. 21).

COMPENSATION PAYMENTS COMMUTED TO LUMP SUM.

At any time after an award, on its own motion or upon application of either party, the Commission may, in its discretion, commute compensation payments to a lump sum. Provision is made for amount of commutation, covering different classes of disability. The Commission has discretionary power in ordering the manner in which the lump sum payment is to be made (Sec. 33).

AGREEMENT OR AWARD MODIFIED.

At any time within 245 weeks from the date of award, after due notice and upon application of any interested party, the Commission may review, diminish or increase any compensation awarded, upon the ground that the disability of the injured employee has either increased, diminished or terminated (Sec. 82).

At any time within 20 days after a final order or decision by the Commission, either party may apply for a re-hearing on the ground (1) that the Commission acted without or in excess of its powers, (2) that the order, decision or award was procured by fraud, (3) that the evidence did not justify the finding of fact, (4) that the applicant has discovered new and material evidence which could not be produced at the hearing, (5) that the findings of fact do not support the order, decision or award. Final decision is subject to review by the Supreme Court upon writ of certiorari, on the ground of fraud, lack of jurisdiction, etc. (Secs. 82-84).

Digitized by Google

PROCEDURE IN CASE OF DISPUTE.

All disputes relative to compensation are to be decided by the Commission (Sec. 73); but it may refer any dispute to a referee (Sec. 76), subject to the right to a re-hearing before the Commission (Sec. 80).

ATTORNEYS' FEES.

The Commission may fix and allow as a lien a reasonable attorney's fee for legal services pertaining to a claim for compensation, and the reasonable disbursements in connection therewith; but no claim or agreement for such services in excess of a reasonable amount shall be valid or binding (Sec. 29).

COMPENSATION AWARD PRIOR LIEN.

A claim for compensation for injury or death, or any award or judgment thereon, has the same preference as is given by law to claims for wages (Sec. 29).

COMPENSATION NOT ASSIGNABLE.

No claim for compensation shall be assignable before payment (Sec. 29).

COMPENSATION EXEMPT FROM CLAIMS OF CREDITORS.

No claim for compensation, nor compensation awarded, adjudged or paid, shall be subject to be taken for the debts of the parties entitled to such compensation, except for such fees and expenses as are allowed by the Commission (Sec. 29).

EMPLOYER SUBROGATED TO EMPLOYEE'S RIGHT OF ACTION AGAINST THIRD PARTIES.

The making of a lawful claim against an employer for compensation for injury or death operates as an assignment to the employer of any right of action which the employee or his representative may have against any third party for such injury or death; and such employer is subrogated to any such right and may enforce in his own name the liability of such third party (Sec. 31).

Digitized by Google

Digitized by Google

TEXT OF THE COMPENSATION LAW.

CHAPTER 176, LAWS OF 1913.

AN ACT to promote the general welfare of the people of this state as affected by accident causing the injury or death of employees in the course of their employment, by creating a liability on the part of the employers to compensate such employees and their dependents for such accidental injury or death irrespective of the fault of either party, and providing the means and methods of enforcing such liability; and creating a "state compensation insurance fund" to insure employers against such liability and providing for its administration and regulating such insurance by other insurance carriers; and requiring safety in all employments and places of employment in this state and providing the means and methods of enforcing such safety; and requiring reports of industrial accidents; and providing penalties for offenses by employers, their officers, agents, and by employees and other persons and corporations; and creating an industrial accident commission, providing for its organization, defining its powers and duties and providing for a review of its orders, decisions and awards; and appropriating moneys to carry out the provisions of this act; and repealing all acts and parts of acts inconsistent with the provisions of this act.

The people of the State of California do enact as follows:

Section 1. This act shall be known, and may be cited, as the "workmen's compensation, insurance and safety act" and shall apply to the subjects mentioned in its title.

Sec. 2. The following terms as used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) The term "commission" means the industrial accident commission of the State of California.

(2) The term "commissioner" means one of the members of the commission.

(3) The term "compensation" means compensation under this act and includes every benefit or payment conferred by sections

Digitized by Google

twelve to thirty-six, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence.

(4) The term "damages" means the recovery allowed in an action at law as contrasted with compensation under this act.

(5) The term "person" includes an individual, firm, voluntary association or a corporation.

(6) The term "insurance carrier" includes the state compensation insurance fund herein created and any private company, corporation or mutual association authorized under the laws of this state to insure employers against liability for compensation under this act.

(7) The phrase "compensation provisions of this act" means and includes sections twelve to thirty-five, inclusive, of this act.

(8) The phrase "safety provisions of this act" means and includes sections fifty-one to seventy-two, inclusive, of this act.

(9) Whenever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Sec. 3. There is hereby created a board to consist of three members who shall be appointed by the governor from the state at large and which shall be known as the "industrial accident commission" and shall have the powers, duties and functions hereinafter conferred. Within thirty days prior to the first day of January, 1914, the governor shall appoint the three members of said commission, one for the term of two years, one for the term of three years and one for the term of four years. Thereafter, the term of office of each commissioner shall be four years. Vacancies shall be filled by appointment in the same manner for the unexpired term. Each commissioner shall receive an annual salary of five thousand dollars. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Sec. 4. The commission shall organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power or authority of the commission. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the commission. The act of the majority of the commission, when in ses-

Digitized by Google

sion as a commission, shall be deemed to be the act of the commission, but any investigation, inquiry or hearing, which the commission has power to undertake or to hold, may be undertaken or held by or before any member thereof or any referee appointed by the commission for that purpose, and every finding, order, decision, or award made by any commissioner or referee, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

Sec. 5. The commission shall have a seal, bearing the following inscription: "Industrial accident commission State of California, seal." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

Sec. 6. The commission shall keep its principal office in the city and county of San Francisco, and shall also keep an office in the city of Los Angeles, and shall provide itself with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places, the commission shall have power to rent temporary quarters.

Sec. 7. The commission shall have full power and authority:

(1) To appoint as its attorney an attorney-at-law of this state, who shall hold office at the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed so to do by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions or proceedings, civil or criminal, directed or authorized by the commission; to advise the commission and each member thereof, when so requested, in regard to all matters in connection with the jurisdiction, powers or duties of the commission and members thereof; and generally to perform all duties and services as attorney to the commission which may be required of him.

(2) To appoint, and it shall appoint, a secretary, who shall hold office at the pleasure of the commission. It shall be the

Digitized by Google

duty of the secretary to keep a full and true record of all the proceedings of the commission, to issue all necessary processes, writs, warrants and notices which the commission is required or authorized to issue, and generally to perform such other duties as the commission may prescribe. The commission may also appoint such assistant secretaries as may be necessary and such assistant secretaries may perform any duty of the secretary, when so directed by the commission.

(3) To appoint a manager of the state compensation insurance fund who shall hold office at the pleasure of the commission. It shall be the duty of such manager to manage, supervise and conduct, subject to the general direction and approval of the commission, the business and affairs of the state compensation insurance fund and to perform such other duties as the commission may prescribe. Before entering on the duties of his office, he must give an official bond in the sum of $50,000, and take and subscribe to an official oath. Said bond must be approved by the commission, by written endorsement thereon, and be filed in the office of the secretary of state.

(4) To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe.

(5) To employ such other assistants, officers, experts, statisticians, actuaries, accountants, inspectors, referees and other employees, as it may deem necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

Sec. 8. All officers and employees of the commission shall receive such compensation for their services as may be fixed by the commission and shall hold office at the pleasure of the commission and shall perform such duties as are imposed on them by law or by the commission. The salaries of the members of the commission, its attorney, secretary and assistant secretary, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other state officers. The salary or compensation of every other person holding office or employment under the commission, as fixed by law or by the commission, shall be paid monthly, after being approved by the commission, upon claims therefor to be audited by the state board of control. All expenses incurred by the commission pursuant to the provision of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers

Digitized by Google

and employees, incurred while on business of the commission, either within or without the state, shall, unless otherwise provided in this act, be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control; *provided, however,* that no such expenses incurred outside of the state shall be allowed unless prior authorization therefor be obtained from the board of control.

Sec. 9. In all cases in which salaries, expenses or outgoings of one department under the jurisdiction of the commission are expended in whole or in part on behalf of another department the commission may apportion the same between such departments.

Sec. 10. The commission shall cause to be printed and furnished free of charge to any employer or employee, or other person, such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a book in which shall be entered the minutes of all its proceedings, a book in which shall be recorded all awards made by the commission and such other books or records as it shall deem requisite for the proper and efficient administration of this act; all such records to be kept in the office of the commission.

Sec. 11. The commission shall also have power and authority:

(1) To charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken on proceedings had, fifteen cents for each folio.

(2) To publish and distribute in its discretion from time to time, in addition to its annual report to the governor of the state, such further reports and pamphlets covering its operations, proceedings and matters relative to its work as it may deem advisable.

(3) To fix and collect reasonable charges for publications issued under its authority.

(4) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the "industrial accident fund" and shall be accompanied by a detailed statement thereof.

Digitized by Google

Sec. 12. (*a*) Liability for the compensation provided by this act, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury sustained by his employees by accident arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment as such.

(3) Where the injury is proximately caused by accident, either with or without negligence, and is not so caused by the intoxication or the wilful misconduct of the injured employee.

(*b*) Where such conditions of compensation exist, the right to recover such compensation pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death, except that when the injury was caused by the employer's gross negligence or wilful misconduct and such act or failure to act causing such injury was the personal act or failure to act on the part of the employer himself, or if the employer be a partnership on the part of one of the partners, or if a corporation, on the part of an elective officer or officers thereof, and such act or failure to act indicated a wilful disregard of the life, limb, or bodily safety of employees, any such injured employee may, at his option, either claim compensation under this act or maintain an action at law for damages.

(*c*) In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

Sec. 13. The term "employer" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: The state, and each county, city and county, city, school district and all public corporations therein, and every person, firm, voluntary association, and private corporation, (including any public service corporation) who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written, and the legal representatives of any deceased employer.

Digitized by Google

Sec. 14. The term "employee" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: every person in the service of an employer as defined by section thirteen hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, but excluding any person whose employment is both casual and not in the usual course of the trade, business, profession or occupation of his employer, and also excluding any employee engaged in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service.

Sec. 15. Where liability for compensation under this act exists such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

(*a*) Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, as may reasonably be required at the time of the injury and within ninety days thereafter, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same.

(*b*) 1. If the accident causes disability, a disability indemnity which shall be payable for one week in advance as wages on the fifteenth day after the injured employee leaves work as a result of the injury, and thereafter on the employer's regular payday, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

(1) If the period of disability does not last longer than two weeks from the day the employee leaves work as the result of the injury, no disability indemnity whatever shall be recoverable.

(2) If the period of disability lasts longer than two weeks from the day the employee leaves work as the result of the injury, no disability indemnity shall be recoverable for the first two weeks of such disability.

2. The disability indemnity payable shall be as follows:

(1) If the accident causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability;

(2) If the accident causes temporary partial disability, sixty-

Digitized by Google

five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the accident is at times total and at times partial, the weekly disability indemnity during the periods of each such total or partial disability shall be in accordance with paragraphs (1) and (2) of this subdivision respectively;

(4) Paragraphs (1), (2) and (3) of this subdivision shall be limited as follows: aggregate disability indemnity for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the accident.

(5) If the accident causes permanent disability, the percentage of disability to total disability shall be determined and the disability indemnity computed and allowed as follows: for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter forty per cent of such weekly earnings during the remainder of life.

(6) The indemnity for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and al-

Digitized by Google

lowed as follows: if under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability; if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earnings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee and his age at the time of such injury.

(8) Nothing contained in the foregoing schedule of permanent disability indemnity shall be held to limit the amount of compensation recoverable for any such permanent injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be deducted from the compensation payable in accordance with the said schedule.

(9) The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

3. The death of the injured employee shall not affect the liability of the employer under subsections (*a*) and (*b*) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, without administration, or if there are no dependents, to the personal representatives of the deceased employee or other person entitled thereto, but such death shall be deemed to be the termination of the disability.

(*c*) If the accident causes death, either with or without disability, a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay-day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

(1) In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient, when added to the disability indemnity which, at the time of death has accrued and become payable, under the provisions of subsection (*b*) hereof, to make the total dis-

Digitized by Google

ability indemnity and death benefit equal to three times his average annual earnings, such annual earnings to be taken at not less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(2) In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee as the annual amount devoted by the deceased to the support of the person or persons so partially dependent bears to such average annual earnings; *provided,* that the death benefit shall not be greater than a sum sufficent, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the provisions of subsection (*b*) hereof to make the total disability indemnity and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at no less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(3) If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expenses of his burial not exceeding one hundred dollars and such further death benefit as may be provided by law.

(*d*) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

Sec. 16. (*a*) Unless compensation is paid or an agreement for its payment made within the time limited in this section for the institution of proceedings for its collection, the right to institute such proceedings shall be wholly barred.

(*b*) The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (*a*) of section fifteen or for the collection of the disability indemnity provided by subsection (*b*) of said section fifteen must be commenced within six months from the date of the accident, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (*c*) of said section fifteen must be commenced within one year from the date of death, and in any event within two hundred forty weeks from the date of the accident,

Digitized by Google

and can only be maintained when it appears that death ensued within one year from the date of the accident, or that the accident causing death also caused disability which continued to the date of the death and for which a disability indemnity was paid. or an agreement for its payment made, or proceedings for its collection commenced within the time limited for the commencement of proceedings for the recovery of the disability indemnity.

(*c*) The payment of the disability indemnity or death benefit, or any part thereof, or agreement therefor, shall have the effect of extending the period within which proceedings for its collection may be commenced, six months from the date of the agreement or last payment of such disability indemnity or death benefit or any part thereof.

(*d*) If an injured employee, or in the case of his death, one or more of his dependents, shall be a minor or incompetent at any time when any right or privilege accrues to such person under the provisions of this act, a general guardian, appointed by the court or a guardian *ad litem* or trustee appointed by the commission or a commissioner may, on behalf of any such person, claim and exercise any such right or privilege with the same force and effect as if no such disability existed; and no limitation of time provided by this act shall run against any such minor or incompetent unless and until such guardian or trustee is appointed.

(*e*) No compensation shall be payable in respect of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, the risk of which is, in the opinion of the commission, inconsiderable in view of the seriousness of the injury.

(*f*) The fact that an employee has suffered a previous disability, or receives compensation therefor, shall not preclude him from compensation for a later injury, or his dependents from compensation for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be fixed at such sum as will reasonably represent his annual earning capacity at the time of the later injury.

(*g*) Any payment, allowance or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this act was not then due and payable or when there is any dispute

Digitized by Google

or question concerning the right to compensation, shall not, in the absence of any agreement, be construed to be an admission of liability for compensation of the part of the employer, or the acceptance thereof as a waiver of any right or claim which the employee or his dependents may have against the employer, but any such payment, allowance or benefit may be taken into account by the commission in fixing the amount of the compensation to be paid.

Sec. 17. (*a*) The average weekly earnings referred to in section fifteen hereof such be one fifty-second of the average annual earnings of the employee; in computing such earnings his average annual earnings shall be taken at not less than three hundred and thirty-three dollars and thirty-three cents, nor at more than one thousand six hundred and sixty-six dollars and sixty-six cents and between said limits shall be arrived at as follows:

(1) If the injured employee has worked in the same employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which he earned as such employee during the days when so employed.

(2) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which an employee of the same class, working substantially the whole of such immediately preceding year, in the same or a similar kind of employment, in the same or a neighboring place, earned during the days when so employed.

(3) In every case where for any reason the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the average annual earning capacity of the injured employee at the time of the injury in the kind of employment in which he was then working, or in any employment similar thereto.

(*b*) In determining such average weekly earnings, there shall be included the market value of board, lodging, fuel and other advantages received by the injured employee, as part of his re-

Digitized by Google

muneration and which can be estimated in money, but such average weekly earnings shall not include any sum which the employer paid to the injured employee to cover any special expenses entailed on him by the nature of his employment.

(*c*) If the injured employee is a minor, and his incapacity, whether total or partial, is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly sum, that under ordinary circumstances he would probably be able to earn after obtaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury, if he had not been injured.

Sec. 18. The weekly loss in wages referred to in section fifteen hereof shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of said section, and the weekly amount which the injured employee, in the exercise of reasonable diligence, will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall be had to the ability of the injured employee to compete in an open labor market.

Sec. 19. (*a*) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(1) A wife upon a husband with whom she was living at the time of his death.

(2) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(3) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he or they are living at the time of the death of such parent or for whose maintenance such parent was legally liable at the time of his death, there being no surviving dependent parent.

(*b*) In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee.

(*c*) No person shall be considered a dependent of any deceased employee unless a member of the family of such employee or unless such person bears to such employee the relation of hus-

Digitized by Google

band or wife, child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, nephew or niece.

(*d*) 1. If there is one or more persons wholly dependent for support upon a deceased employee, such person or persons shall receive the entire death benefit, and any person or persons partially dependent shall receive no part thereof, unless otherwise ordered by the commission.

2. If there is more than one such person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them, unless otherwise ordered by the commission.

3. If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as the death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency, unless otherwise ordered by the commission.

(*e*) The death benefits shall be paid to such one or more of the dependents of the deceased, or to a trustee appointed by the commission, or a commissioner, for the benefit of the person or persons entitled, as may be determined by the commission, and the commission may, anything in this act contained to the contrary notwithstanding, apportion such benefits among the dependents in proportion to their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission.

Sec. 20. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer; *provided, however,* that actual knowledge of such accident and injury on the part of such employer, or his managing agent or superintendent in charge of the work, upon which the injured employee was engaged at the time of the injury, shall be equivalent to such service;

Digitized by Google

and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for the collection of the claim that there was no intention to mislead or prejudice the employer, and that he was not in fact misled or prejudiced thereby.

Sec. 21. (*a*) Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

(*b*) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and placed fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request of the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall fail or refuse to submit to such examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

Sec. 22. Upon filing with the commission by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right of liability arising out of, or incident thereto, jurisdiction over which is vested by this act in the commission, a time and place shall be fixed for the hearing thereof, which shall be not less than ten days nor more than forty days after the filing of such application. The person filing such application shall be known as the applicant and the adverse party shall be known as the defendant. A copy of said application, together with a notice of the time and place of hearing thereof, shall forthwith be served upon all adverse parties and may be served either as a summons in a

Digitized by Google

civil action or in the same manner as any other notice that is authorized or required to be served under the provisions of this act. A notice of the time and place of hearing shall also be served upon the applicant.

Sec. 23. If any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper or document to the attention of the commission as a defense to the claim, or otherwise, he must within five days after the service of the application upon him, file with or mail to the commission his answer setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of such answer must be forthwith served upon all adverse parties.

Sec. 24. (*a*) No pleadings, other than the application and answer, shall be required. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the commission. Either party shall have the right to be present at any hearing, in person or by attorney or by any other agent, and to present such testimony as shall be pertinent under the pleadings, but the commission may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the time-books and pay roll of the employer to be examined by any commissioner or any referee appointed by the commission, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination to be reported to the commission for its consideration.

(*b*) The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the commission. The commission may thereupon make its findings and award based upon such stipulation, or may in its discretion set the matter down for hearing and take such further testimony or make such further investigations as may be necessary to enable it to completely determine the matter in controversy.

Sec. 25. (*a*) After final hearing by the commission, it shall, within thirty days, make and file (1) its findings upon all facts involved in the controversy and (2) its award which shall state its determination as to the rights of the parties.

Digitized by Google

(*b*) The commission in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability.

(*c*) If, in any proceeding under sections twelve to thirty-five, inclusive, of this act, it is proved that an accident has happened for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any incapacity had resulted, the commission may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

(*d*) The commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections twelve to thirty-five, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor; *provided,* that no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the accident. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards.

Sec. 26. (*a*) Any party affected thereby may file a certified copy of the findings and award of the commission with the clerk of the superior court for any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award.

(*b*) The certified copy of the findings and award of the commission and a copy of the judgment shall constitute the judgment roll. The pleadings, all orders of the commission, its original findings and award, and all other papers or documents filed in the cause shall remain on file in the office of the commission.

(*c*) The commission, or any member thereof, may stay the execution of any judgment entered upon an award of the commission, upon good cause appearing therefor and upon such terms and conditions as may be imposed. A certified copy of such order shall be filed with the clerk entering such judgment.

(*d*) Satisfaction of a judgment entered upon the award of the commission may be entered in the manner provided by law for the satisfaction of judgment. When a judgment is satisfied in fact,

Digitized by Google

otherwise than upon an execution, the commission may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction.

Sec. 27. The orders, findings, decisions or awards of the commission made and entered under sections twelve to thirty-five, inclusive, of this act may be reviewed by the courts specified in sections eighty-four and eighty-five hereof and within the time and in the manner therein specified and not otherwise.

Sec. 28. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this act before the commission, costs as between the parties shall be allowed or not in the discretion of the commission, and the commission may in its discretion, where payments of compensation have been unreasonably delayed, allow the beneficiary thereof interest thereon, at not to exceed one and one-half per cent per month, during such period of delay.

Sec. 29. (*a*) No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided.

(*b*) The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) The reasonable expense incurred by or on behalf of the injured employee and for which the employer is liable under the provisions of subsection (*a*) of section fifteen hereof.

(3) The reasonable burial expenses of the deceased employee, not to exceed the sum of one hundred dollars.

(*c*) If notice in writing be given to the employer setting forth the nature and extent of any claim, that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount

Digitized by Google

and approval thereof by the commission. The commission may, in its discretion, order the amount of such claim as fixed and allowed by it paid directly to the person entitled, either in a lump sum or in installments.

(*d*) No claim or agreement for the legal services or disbursements mentioned in paragraph (1) of subsection (*b*) hereof, or for the expense mentioned in paragraph (2) of said subsection (*b*), in excess of a reasonable amount, shall be valid or binding in any respect.

(*e*) A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, shall have the same preference over the other unsecured debts of the employer as is given by law to claims for wages. Such preference shall be for the entire amount of compensation to be paid, but this section shall not impair the lien of any previous award.

Sec. 30. The liability of principals and contractors for compensation under this act, when other than the immediate employer of the injured employee, shall be as follows:

(*a*) The principal, any general contractor and each intermediate contractor who undertakes to do, or contracts with another to do, or to have done, any work, shall be liable to pay to any employee injured while engaged in the execution of such work, or to his dependents in the event of his death, any compensation which the immediate employer is liable to pay.

(*b*) The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application; *provided, however,* that payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other by any person entitled to such compensation.

(*c*) When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor.

(*d*) The liability imposed by this section upon such principal,

Digitized by Google

general contractor and intermediate contractor shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal, general contractor or intermediate contractor has undertaken to execute any work, or when such premises or work are otherwise under his control or management.

(2) Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the happening of such accident, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation to the injured person or his dependents.

(3) The commission may, in its discretion, order that execution against the principal, general contractor and any intermediate contractor, be stayed until execution against the immediate employer shall be returned unsatisfied.

Sec. 31. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment to the employer of any right to recover damages which the injured employee, or his personal representative, or other person, may have against any other party for such injury or death, and such employer shall be subrogated to any such right and may enforce in his own name the legal liability of such other party. The amount of compensation paid by the employer, or the amount of compensation to which the injured employee or his dependents is entitled, shall not be admissible in evidence in any action brought to recover damages, but any amount collected by the employer, under the provisions of this section, in excess of the amount paid by the employer, or for which he is liable, shall be held by him for the benefit of the injured employee or other person entitled.

Sec. 32. (*a*) No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to settle, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employee any interest which such employee may no divert by such settlement or for which he, or his

Digitized by Google

estate, shall, in the event of such settlement by him, be accountable to such dependents or any of them.

(*b*) The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment when subject to the provisions of this act, and no release of liability or settlement agreement shall be valid unless it provides for the payment of full compensation in accordance with the provisions of this act or until and unless it shall be approved by the commission.

(*c*) A copy of any such release or settlement agreement signed by both parties shall forthwith be filed with the commission. When such release or settlement agreement is filed with the commission and approved by it, the commission may of its own motion, or on the application of either party, without notice, enter its award based upon such release or settlement agreement.

(*d*) Every such release or settlement agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employee, determined according to section seventeen hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employee up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or settlement agreement the date of death, the name of the widow, if any, the name and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to be made.

Sec. 33. (*a*) At the time of making its award or at any time thereafter the commission on its own motion, either with or without notice, or upon application of either party with due notice to the other, may in its discretion, commute the compensation payable under this act to a lump sum, if it appears that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the greater part of his assets, or is about to do so, or that the employer is not a resident of this state, and the commission may order such compensation paid forthwith or at some future time.

Digitized by Google

(*b*) The amount of the commuted payment shall be determined in accordance with the following provisions:

(1) If the accident cause temporary disability, the commission shall estimate the probable duration thereof and the probable amount of the temporary disability indemnity payable therefor in accordance with the provisions of section fifteen hereof and shall fix the lump sum payment at such amount so determined.

(2) If the accident causes permanent disability or death, the commission shall fix the total amount of the permanent disability indemnity or death benefit payable therefor in accordance with the provisions of said section fifteen and shall estimate the present value thereof, assuming interest at the rate of six per cent per annum, disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitled the beneficiary to a life-pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension.

(*c*) The commission in its discretion may order the lump sum payment, determined as hereinbefore provided, paid directly to the injured employee or to his dependents, or deposited with any savings bank or trust company authorized to transact business in this state, that will agree to accept the same as a deposit bearing interest at not less than four per cent, per annum, or the commission may order the same deposited with the state compensation insurance fund. Any such amount so deposited, together with all interest thereon, shall thereafter be held in trust for the injured employee, or in the event of his death, for his dependents, who shall have no further recourse against the employer. Payments from said fund, when so deposited, shall be made by the trustee only in the same amounts and at the same times as fixed by the order of the commission and until said fund and interest thereon shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the commission, to the choice of the injured employee or his dependents. Upon the making of such payment, the employer shall present to the commission a proper receipt evidencing the same, executed either by the injured employee or his dependents, or by the trustee, and the commission shall thereupon issue its certificate in proper form evidencing the same, and such certificate, upon filing with the clerk of the superior court in which any judgment upon an award may have been entered, shall operate as a satisfaction of said award and shall fully discharge the employer from any further liability on account thereof.

Digitized by Google

Sec. 34. (*a*) Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or the right of the employer to insure in mutual or other companies, in whole or in part, against liability for the compensation provided for by this act; or, to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act.

(*b*) Liability for compensation shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this act, and the person so entitled shall, irrespective of any insurance or other contract, except as otherwise provided in this act, have the right to recover such compensation directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurance carrier a party to the original application or by filing a separate application, the liability of any insurance carrier, which may, in whole or in part, have insured against liability for such compensation; *provided, however,* that payment in whole or in part of such compensation by either the employer or the insurance company shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; *and provided, further,* that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

(*c*) Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

(*d*) Such policy must also provide that the employee shall

Digitized by Google

have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employee, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

(*e*) 1. If the employer shall be insured against liability for compensation with any insurance carrier, and if after the happening of any accident such insurance carrier shall serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution but shall be continued against such insurance carrier.

2. If at the time of the happening of an accident for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the happening of such accident and upon the insurance carrier a notice that the insurance carrier has, in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the em-

Digitized by Google

ployer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

(*f*) Where any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer was liable, or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name.

Sec. 35. (*a*) If any insurance policy shall be issued covering liability for compensation, which policy shall contain any limitation as to the compensation payable, such limitation shall be printed in the body of such policy in boldface type and in addition thereto the words "limited compensation policy" shall be printed on the top of the policy in boldface type not less than eighteen point in size.

(*b*) No insurance carrier shall insure against the liability of the employer for damages recoverable at law by the injured employee under the optional provisions contained in section twelve hereof, and any insurance carrier liable to any such injured employee for compensation upon the payment of the same shall have the same option given by said section twelve to such employee and shall be fully subrogated to his rights, and may enforce such liability for damages against the employer in its own name, anything in the insurance contract to the contrary notwithstanding.

Sec. 36. There is hereby created and established a fund to be known as the "state compensation insurance fund," to be administered by the industrial accident commission of the state, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act and insuring to employees and other persons the compensation fixed by this act for employees and their dependents.

Sec. 37. (*a*) The state compensation insurance fund shall be a revolving fund and shall consist of such specific appropriations as the legislature may from time to time make or set aside for the use of such fund, all premiums received and paid into the said fund for compensation insurance issued, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided.

Digitized by Google

(*b*) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and other expenses to be charged against said fund in accordance with the provisions contained in this act.

(*c*) Said fund shall, after a reasonable time during which it may establish a business, be fairly competitive with other insurance carrier, and it is the intent of the legislature that said fund shall ultimately become neither more nor less than self-supporting.

Sec. 38. (*a*) The commission is hereby vested with full power, authority and jurisdiction over the state compensation insurance fund and may do and perform any and all things whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said fund in the administration thereof, or in connection with the insurance business to be carried on by it under the provisions of this act, as fully and completely as the governing body of a private insurance carrier might or could do.

(*b*) The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the state compensation insurance fund, and in that name, without any other name or title, the commission may:

(1) Sue and be sued in all the courts of the state in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the state compensation insurance fund, the administration, management or conduct of the business or affairs relating thereto.

(2) Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to the state compensation insurance fund as are authorized or permitted under the provisions of this act.

(3) Invest and reinvest the moneys belonging to said fund as hereinafter provided.

(4) Conduct all business and affairs, relating to the state compensation insurance fund, whether herein specifically designated or in addition thereto.

(*c*) The commission may delegate to the manager of the state compensation insurance fund, or to any other officer, under such rules and regulations and subject to such conditions as it may from

Digitized by Google

time to time prescribe, any of the powers, functions or duties, conferred or imposed on the commission under the provisions of this act in connection with the state compensation insurance fund, the administration, management and conduct of the business and affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the powers and functions and perform the duties delegated with the same force and effect as the commission, but subject to its approval.

(*d*) The commission shall not, nor shall any commissioner, officer or employee thereof, be personally liable in his private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the administration, management or conduct of the state compensation insurance fund, its business or other affairs relating thereto.

Sec. 39. In conducting the business and affairs of the state compensation insurance fund, the manager of the said fund or other officer to whom such power and authority may be delegated by the commission, as provided by subsection (*c*) of section thirty-eight hereof, shall have full power and authority:

(1) To enter into contracts of insurance, insuring employers against liability for compensation and insuring to employees and other persons the compensation fixed by this act.

(2) To sell annuities covering compensation benefits.

(3) To decline to insure any risk in which the minimum requirements of the commission with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the state compensation insurance fund, but shall not have power or authority, except as otherwise provided in this subdivision, to refuse to insure any compensation risk tendered with the premium therefor.

(4) To reinsure any risk or any part thereof.

(5) To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation.

(6) To make rules and regulations for the settlement of claims against said fund and to determine to whom and through whom the payments of compensation are to be made.

(7) To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

Digitized by Google

Section 40. (*a*) It shall be the duty of the commission to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance coverage as herein provided, and such rates shall be fixed with due regard to the physical hazards of each industry, occupation or employment and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and the means and methods of caring for injured persons, but such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support.

(*b*) The rates so made shall be that percentage of the payroll of any employer which, in the long run and on the average, shall produce a sufficient sum, when invested at three and one half per cent interest:

(1) To carry all claims to maturity; that is to say the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To meet the reasonable expenses of conducting the business of such insurance;

(3) To produce a reasonable surplus to cover the catastrophe hazard.

Sec. 41. The insurance contracts entered into between the state compensation insurance fund and persons insuring therewith may be either limited or unlimited and issued for one year or, in the form of stamps or tickets or otherwise, for one month or any number of months less than one year, or for one day or any number of days less than one month, or during the performance of any particular work, job or contract; *provided,* that the rates charged shall be proportionately greater for a shorter than for a longer period and that a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day. Nothing in this act shall be construed to prevent any person applying for compensation insurance from being covered temporarily until the application is finally acted upon, or to prevent the insured from surrendering any policy at any time and having returned to him the difference between the premium paid and the premium at the customary short term for the shorter period which such policy has already run. The state com-

Digitized by Google

pensation insurance fund may at any time cancel any policy, after due notice, upon a *pro rata* basis of premium repayment.

Sec. 42. The state compensation insurance fund may issue policies, including with their employees, employers who perform labor incidental to their occupations, and including also members of the families of such employers engaged in the same occupation, such policies insuring to such employers and working members of their families the same compensations provided for their employees, and at the same rates; *provided*, that the estimations of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their payrolls upon which their premium is computed. Such policies may likewise be sold to self-employing persons and to casual employees, who, for the purpose of such insurance, shall be deemed to be employees within the meaning of sections twelve to thirty-five, inclusive, of this act.

Sec. 43. The treasurer of the state shall be custodian of all moneys and securities belonging to the state compensation insurance fund, except as otherwise provided in this act, and shall be liable on his official bond for the safe-keeping thereof. All moneys belonging to said fund collected or received by the commission, or the manager of the state compensation insurance fund, under and by virtue of the provisions of this act, shall be delivered to the treasurer of the state or may be deposited to his credit in such bank or banks throughout the state as he may, from time to time, designate, and such moneys when so delivered or deposited shall be credited by the treasurer to the said fund and no moneys received or collected on account of such fund shall be expended or paid out of such fund without first passing into the state treasury and being drawn therefrom as provided in this act. In like manner there shall be delivered to the treasurer all securities belonging to said fund which shall be held by him until otherwise disposed of as provided in this act.

Sec. 44. (*a*) The commission shall submit each month to the state board of control an estimate of the amount necessary to meet the current disbursements from the state compensation insurance fund during each succeeding calendar month and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same.

Digitized by Google

(*b*) At the end of each calendar month the commission shall account to the state board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(*c*) During the months of January and of July of each year the state board of control or the commission shall cause a valuation to be made of the properties and securities which have been acquired and which are held for said fund, and shall report the results of the same to the state controller, whose duty it shall be to keep a special ledger account showing all of the assets pertaining to the state compensation insurance fund. In the controller's general ledger this fund account may be carried merely as a cash account, like other accounts of funds in the state treasury, and therein only the actual cash coming into the state compensation insurance fund shall be credited to such fund.

Sec. 45. (*a*) The commission shall cause all moneys in the state compensation insurance fund, in excess of current requirements, to be invested and reinvested, from time to time, in the securities now or hereafter authorized by law for the investment of funds of savings banks.

(*b*) The commission shall, from time to time, submit to the state board of control an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments to be made and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on the state compensation insurance fund in favor of the commission for such amount and the treasurer is authorized and directed to pay the same.

(*c*) At the end of each calendar month the commission shall account to the said board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(*d*) All moneys in said fund, in excess of current requirements and not otherwise invested, may be deposited by the state treasurer from time to time in the banks authorized by law to receive deposits of public moneys under the same rules and regulations that govern the deposit of other public funds and the interest accruing thereon shall be credited to the state compensation insurance fund.

Sec. 46. Each county, city and county, city, school district or other public corporation within the state, may insure against its liability for compensation, with the state compensation insurance

Digitized by Google

fund and not with any other insurance carrier unless such fund shall refuse to accept the risk when the application for insurance is made, and the premium therefor shall be a proper charge against the general fund of each such political subdivision of the state.

Sec. 47. When the premium rates for insurance in the state compensation insurance fund shall have been established the commission shall furnish schedules of rates and copies of the forms of policy to the commissioner of labor, to the clerk and to the treasurer of every county, city and county, and city in the state, and it shall be the duty of every public officer to whom the foregoing may be furnished to fill out and transmit to the manager of the state compensation insurance fund applications for compensation insurance in such fund and to receive and transmit to said manager all premiums paid on accounts of any policy issued or applied for.

Sec. 48. The commission shall each quarter make to the governor of the state, reports of the business done by the state compensation insurance fund during the previous quarter, and a statement of the fund's resources and liabilities, and it shall be the duty of the state board of control to audit such reports and to cause an abstract thereof to be published one or more times in at least two newspapers of general circulation in the state. The commission shall likewise make to the state insurance commissioner all reports required by law to be made by other insurance carriers.

Sec. 49. Any employer who shall wilfully misrepresent the amount of the payroll upon which his premium under this act is to be based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid had his payroll been correctly computed, and the liability to the state under this section shall be enforced in a civil action in the name of the state compensation insurance fund and any amount so collected shall become a part of said fund.

Sec. 50. Any person who wilfully misrepresents any fact in order to obtain insurance at less than the proper rate for such insurance, or in order to obtain any payments out of such fund, shall be guilty of a misdemeanor.

Sec. 51. The following terms, as used in sections fifty-one to

Digitized by Google

seventy-two, inclusive, of this act, shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) The phrase "place of employment" shall mean and include every place, whether indoors or out or underground, or elsewhere and the premises appurtenant thereto, where, either temporarily or permanently, any industry, trade, work or business is carried on or where any process or operation directly or indirectly related to any industry, trade, work or business, is carried on, and where any person is directly or indirectly employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service.

(2) The term "employment" shall mean and include any trade, work, business, occupation or process of manufacture, or any method of carrying on such trade, work, business, occupation or process of manufacture in which any person may be engaged, except where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in poultry or stock raising or in household domestic services.

(3) The term "employer" shall mean and include every person firm, voluntary association, corporation, officer, agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.

(4) The term "employee" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment.

(5) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission or any other determination arrived at or decision made by such commission under the safety provisions of this act.

(6) The term "general order" shall mean and include such order made, under the safety provisions of this act, as applies generally throughout the state to all persons, employments or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(7) The term "local order" shall mean and include any ordinance, order, rule or determination of any board of supervisors, city council, board of trustees or other governing body of any county, city and county, city or of any school district or other

Digitized by Google

public corporation, or an order or direction of any other public official or board or department upon any matter over which the industrial accident commission has jurisdiction.

(8) The terms "safe" and "safety" as applied to an employment or a place of employment shall mean such freedom from danger to the life or safety of employees as the nature of the employment will reasonably permit.

(9) The terms "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

Sec. 52. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein, and shall furnish and use such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees.

Sec. 53. No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employees, and no such employer shall occupy or maintain any place of employment that is not safe.

Sec. 54. No employer, owner or lessee of any real property in this state shall construct or cause to be constructed any place of employment that is not safe.

Sec. 55. No employee shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment, or place of employ-

Digitized by Google

ment, or fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employees.

Sec. 56. The commission is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

Sec. 57. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise:

(1) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(2) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employees in employments and places of employment.

(3) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(4) To require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

(5) To declare and prescribe the general form of industrial accidents reports, the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the commission from requiring supplemental accident reports.

Sec. 58. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders as authorized by section fifty-seven hereof, the commission shall cause a notice of such hearing to be pub- also in one or more daily newspapers of general circulation pub-

Digitized by Google

lished and circulated in the city and county of San Francisco, and also in one or more daily newspapers of general circulation published and circulated in the county of Los Angeles, such newspapers to be designated by the commission for that purpose. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the commission after hearing had.

Sec. 59. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any employment or place of employment is not safe or that the practices or means or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the commission shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment and may in said order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe, in the manner and within the time specified in said order.

Sec. 60. The commission may, upon application of any employer, or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

Sec. 61. Whenever the commission shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee it may, of its own motion, or upon complaint, summarily investigate the same, with or without notice or hearings, and after a hearing upon such notice as it may prescribe, the commission may enter and serve such order as may be necessary relative thereto, anything in this act to the contrary notwithstanding.

Sec. 62. Every employer, employee and other person shall obey and complly with each and every requirements of every order, decision, direction, rule or regulation made or prescribed by the com-

Digitized by Google

mission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employees in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

Sec. 63. The orders of the commission, general or special, its rules or regulations, findings and decisions, made and entered under the safety provisions of this act, may be reviewed by the courts specified in sections eighty-four and eighty-five of this act and within the time and in the manner therein specified and not otherwise.

Sec. 64. Nothing contained in this act shall be construed to deprive the board of supervisors of any county, or city and county, the board of trustees of any city, or any other public corporation or board or department, of any power or jurisdiction over or relative to any place of employment; *provided,* that whenever the commission shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the county, city and county, or city to which it may apply, establish a minimum requirement concerning the matters covered by such order and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the commission.

Sec. 65. The commission shall have further power and authority:

(1) To establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of the life and safety of employees, and to publish and distribute bulletins on any phase of this general subject.

(2) To cause lectures to be delivered, illustrated by stereopticon or other views, diagrams or pictures, for the information of employers and their employees and the general public in regard to the causes and prevention of industrial accidents, occupational diseases and related subjects.

(3) To appoint advisers who shall, without compensation, as-

Digitized by Google

sist the commission in establishing standards of safety and the commission may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

Sec. 66. Every order of the commission, general or special, its rules and regulations, findings and decisions, made and entered under the safety provisions of this act shall be admissible as evidence in any prosecution for the violation of any of the said provisions and shall, in every such prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety, unless, prior to the institution of the prosecution for such violation or violations, proceedings for a rehearing thereon or a review thereof shall have been instituted as provided in sections eighty-one to eighty-five, inclusive, of this act and not then finally determined.

Sec. 67. Every employer, employee or other person who, either individually or acting as an officer, agent or employee of a corporation or other person, violates any safety provision contained in sections fifty-two, fifty-three, fifty-four or fifty-five of this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who, directly or indirectly, knowingly induces another so to do is guilty of a misdemeanor. In any prosecution under this section it shall be deemed *prima facie* evidence of a violation of any such safety provision, that the accused has failed or refused to comply with any order, rule, regulation or requirement of the commission relative thereto and the burden of proof shall thereupon rest upon the accused to show that he has complied with such safety provision.

Sec. 68. Every violation of the provisions contained in sections fifty-two, fifty-three, fifty-four, or fifty-five, of this act, or any part or portion thereof, by any person or corporation is a separate and distinct offense, and, in the case of a continuing violation thereof, each day's continuance thereof shall constitute a separate and distinct offense.

Sec. 69. All fines imposed and collected under prosecutions for violations of the provisions of sections fifty-one to seventy-two inclusive of this act, shall be paid into the state treasury to the credit of the "accident prevention fund," which fund is hereby created.

Digitized by Google

Sec. 70. It shall be unlawful for any member of the commission, or for any officer or employee of the commission, to divulge to any person not connected with the administration of this act any confidential information obtained from any person, concerning the failure of any other person to keep any place of employment safe, or concerning the violation of any order, rule or regulation issued by the commission. Any member of the commission or any officer or employee of the commission divulging such confidential information shall be guilty of a misdemeanor.

Sec. 71. (*a*) Every employer of labor, and every insurance carrier, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the commission in such form and such detail as the commission shall from time to time prescribe, and shall make specific answers to all questions required by the commission under its rules and regulations. Any such employer or insurance carrier who shall furnish such report shall be exempt from furnishing any similar report or reports authorized or required under the laws of this state.

(*b*) Every employer or insurance carrier receiving from the commission any blanks with directions to fill out the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case he is unable to answer any such questions a good and sufficient reason shall be given for such failure.

(*c*) No information furnished to the commission by an employer or an insurance carrier shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who, in violation of the provisions of this subsection, divulges any information shall be guilty of a misdemeanor.

Sec. 72. (*a*) The commission shall investigate the cause of all industrial accidents occurring within the state in any employment or place of employment, or directly or indirectly arising from or connected with the maintenance or operation of such employment or place of employment, resulting in personal injury or death and requiring, in the judgment of the commission, such investiga-

Digitized by Google

tion; and the commission shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable, provided that neither the order nor the recommendation of the commission, nor any accident report filed with the commission, shall be admitted as evidence in any action for damages or any proceeding to recover compensation, based on or arising out of such injury or death.

(*b*) For the purpose of making any investigation which the commission is authorized to make under the provisions of this section, or for the purpose of collecting statistics or examining the provisions made for the safety of employees, any member of the commission, inspector or other person designated by the commission for that purpose, may enter any place of employment.

(*c*) Any employer, insurance carrier or any other person who shall violate or omit to comply with any of the provisions of this section, or who shall in any way obstruct or hamper the commission, any commissioner or other person conducting any investigation authorized to be undertaken or made by the commission, shall be guilty of a misdemeanor.

Sec. 73. (*a*) All proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, or for the enforcement against the employer or an insurance carrier of any liability for compensation imposed upon him by this act in favor of the injured employee, his dependents or any third person, or for the determination of any question as to the distribution of compensation among dependents or other persons or for the determination of any question as to who are dependents of any deceased employee, or what persons are entitled to any benefit under the compensation provisions of this act, or for obtaining any order which by this act the commission is authorized to make, shall be instituted before the commission, and not elsewhere, except as otherwise in this act provided, and the commission is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to the review by the courts in this act specified and in the manner and within the time in this act provided.

(*b*) All orders, rules and regulations, findings, decisions and awards of the commission in conformity with law shall be in force and shall be *prima facie* lawful; and all such orders, rules and regulations, findings, decisions and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the commission or upon a review by

Digitized by Google

the courts in this act specified and within the time and in the manner herein specified.

Sec. 74. (*a*) Any notice, order or decision required by this act to be served upon any person or party either before, during or after the institution of any proceeding before the commission, may be served in the manner provided by chapter V, title XIV of part II of the Code of Civil Procedure of this state, unless otherwise directed by the commission or a member thereof, in which event the same shall be served in accordance with the order or direction of said commission or member thereof.

(*b*) The secretary, assistant secretary and the inspectors appointed by the commission shall have all of the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in any county or city and county of this state.

(*c*) Any such notice, order or decision affecting the state or any city and county, city, school district or public corporation therein, shall be served upon the same officer, officers, person or persons, upon whom the service of similar notices, orders or decisions is authorized by law.

Sec. 75. The commission shall have full power and authority:

(1) To adopt reasonable and proper rules of practice and procedure;

(2) To regulate and provide the manner, and by whom, minors and incompetent persons shall appear and be represented before it;

(3) To appoint a trustee or guardian *ad litem* to appear for and represent any such minor or incompetent upon such terms and conditions as it may deem proper; and such guardian or trustee must give a bond in the same form and of the same character required by law from a guardian appointed by the courts and in such an amount as the commission or a commissioner may fix and determine, such bond to be approved by the commission or a commissioner, and such guardian or trustee shall not be discharged from liability until he shall have filed an account with the commission or with the probate court and such account shall have been approved. The trustee or guardian shall be entitled to receive such compensation for his services as shall be fixed and allowed by the commission or by the probate court;

(4) To provide for the joinder in the same proceeding of all

Digitized by Google

persons interested therein, whether as employer, insurance carrier, employee, dependent, creditor or otherwise;

(5) To regulate and prescribe the kind and character of notices, where not otherwise prescribed by this act, and the service thereof;

(6) To regulate and prescribe the nature and extent of the proofs and evidence.

Sec. 76. (*a*) The commission may by order entered upon its minutes, upon the agreement of the parties, upon the application of either, or of its own motion, and either with or without notice, direct and order a reference in the following cases:

(1) To try any or all of the issues in any proceeding before it, whether of fact or of law, and to report a finding, order, decision or award to be based thereon.

(2) To ascertain a fact necessary to enable the commission to determine any proceeding before it or to make any order, decision or award that the commission is authorized to make under this act, or that is necessary for the information of the commission.

(*b*) The commission may appoint one or more referees in any proceeding, as it may deem necessary or advisable, and may refer separate matters arising out of the same proceeding to different referees. It may also, in its discretion, appoint general referees who are residents of the county or city and county for which they are appointed and who shall hold office during the pleasure of the commission. Any referee appointed by the commission shall have such powers, jurisdiction and authority as is granted under the law, by the order of appointment and by the rules of the commission and shall receive such salary or compensation for his services as may be fixed by the commission.

(*c*) Any party to the proceeding may object to the appointment of any person as referee upon any one or or more of the grounds specified in section 641 of the Code of Civil Procedure and such objection must be heard and disposed of by the commission. Affidavits may be read and witnesses examined as to such objections.

(*d*) Before entering upon his duties, the referee must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and determine the allegations and evidence of the parties in relation to the matters in the reference, and to make just findings and report according to his understanding.

Digitized by Google

(*e*) The referee must report his findings in writing to the commission within twenty days after the testimony is closed. Such report shall be made in the form prescribed by the commission and shall include all matters required to be included in the order of reference or by the rules of the commission. The facts found and conclusions of law must be separately stated.

(*f*) Upon the filing of the report of the referee, the commission may confirm, adopt, modify or set aside the same or any part thereof and may, either with or without further proceedings, and either with or without notice, enter its order, findings, decision or award based in whole or in part upon the report of the referee.

Sec. 77 (*a*) All hearings and investigations before the commission or any member thereof, or any referee appointed thereby, shall be governed by this act and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission nor any member thereof nor any referee appointed thereby shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved or confirmed by the commission.

(*b*) The commission or any member thereof or any party to the action or proceeding may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

Sec. 78. The commission and each member thereof, its secretary and referees, shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commission or a member thereof, or a referee appointed thereby, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the commission. When any witness who has not been required to attend at the request of any party is subpoenaed by

Digitized by Google

the commission his fees and mileage may be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission, member thereof, or referee as directed in the subpoena. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable.

Sec. 79. The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any member thereof or referee appointed thereby, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpoena issued by the commission or member thereof or referee. The commission or the member thereof or the referee, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subjoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court upon the petition of the commission or such member thereof or referee, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the commission, member thereof or referee. A copy of said order shall be

Digitized by Google

served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or member thereof or referee, the court shall thereupon enter an order that said witness appear before the commission or member thereof or referee at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

Sec. 80. (*a*) The commission is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it under this act.

(*b*) The commission and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any member thereof shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the commission or any member thereof. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Sec. 81. (*a*) Any party or person aggrieved directly or indirectly by any final order, decision, award, rule or regulation of the commission, made or entered under any provision contained in this act, may apply to the commission for a rehearing in respect to any matters determined or covered by such final order, decision, award, rule or regulation and specified in the application for rehearing within the time and in the manner hereinafter specified, and not otherwise.

(*b*) No cause of action arising out of any such final order, decision or award shall accrue in any court to any person until and unless such person shall have made application for such re-

Digitized by Google

hearing, and such application shall have been granted or denied; *provided,* that nothing herein contained shall be construed to prevent the enforcement of any such final order, decision, award, rule or regulation in the manner provided in this act.

(*c*) Such application shall set forth specifically and in full detail the grounds upon which the applicant considers said final order, decision, award, rule or regulation is unjust or unlawful, and every issue to be considered by the commission. Such application must be verified upon oath in the same manner as required for verified pleadings in the courts of record and must contain a general statement of any evidence or other matters upon which the applicant relies in support thereof. The applicant for such rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matter upon which such rehearing is sought other than those set forth in the application for such rehearing.

(*d*) A copy of such application for rehearing shall be served forthwith on all adverse parties, if any, and any such adverse party may file an answer thereto within ten days thereafter. Such answer must likewise be verified. If there are no adverse parties, such application may be heard *ex parte* or the commission may require the application for rehearing to be served on such parties as may be designated by it.

(*e*) Upon filing of an application for a rehearing, if the issues raised thereby have theretofore been adequately considered by the commission, it may determine the same by confirming without hearing its previous determination, or if a rehearing is necessary to determine the issues raised, the commission shall order a rehearing thereon and consider and determine the matter or matters raised by such application. Notice of the time and place of such rehearing shall be given to the applicant and the adverse parties, if any, and to such other persons as the commission may order.

(*f*) If after such rehearing and a consideration of all the facts, including those arising since the making of the order, decision or award involved, the commission shall be of the opinion that the original order, decision or award or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order decision or award made after such rehearing, abrogating, changing or modifying the original order, decision or award shall have the same force and effect as an original order, decision or award, but shall not affect any right or the enforcement of any right arising

Digitized by Google

from or by virtue of the original order, decision or award, unless so ordered by the commission. An application for a rehearing shall be deemed to have been denied by the commission unless it shall have been acted upon within thirty days from the date of filing; *provided, however,* that the commission may upon good cause being shown therefor, extend the time within which it may act upon such application for rehearing for not exceeding thirty days.

Sec. 82. (*a*) At any time within twenty days after the service of any final order or decision of the commission awarding or denying compensation, or arising out of or incidental thereto, any party or parties aggrieved thereby may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order, decision or award was procured by fraud.

(3) That the evidence does not justify the finding of fact.

(4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and procured at the hearing.

(5) That the findings of fact do not support the order, decision or award.

(*b*) Nothing contained in this section shall, however, be construed to limit the right of the commission, at any time within two hundred forty-five weeks from the date of its award, and from time to time, after due notice and upon the application of any party interested, to review, diminish or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

Sec. 83. (*a*) At any time within twenty days after the service of any other final order, decision, rule or regulation made by the commission under the provisions of this act, any party or parties, person or persons aggrieved thereby or otherwise affected, directly or indirectly, may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order or decision was procured by fraud.

Digitized by Google

(3) That the order, decision, rule or regulation is unreasonable.

(*b*) Nothing contained in this section shall be construed to limit the right of the commission, at any time and from time to time, to adopt new or different rules or regulations or new or different standards of safety, or to abrogate, change or modify any existing rule, regulation, or standard, or any part thereof, or to deprive the commission of continuing jurisdiction over the same or to prevent the enforcement in the manner provided by this act, of any rules, regulations or standard of the commission, or any part thereof, when so adopted, or changed, or modified.

Sec. 84. (*a*) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, any party affected thereby may apply to the supreme court of this state or to the district court of appeal of the appellate district in which such person resides, for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order, decision or award or the order, decision or award on rehearing inquired into and determined.

(*b*) Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard in the court unless for good cause the same be continued. No new or additional evidence may be introduced in such court, but the cause shall be heard on the record to the commission as certified to by it. The review shall not be extended further than to determine whether or not:

(1) The commission acted without or in excess of its powers.

(2) The order, decision or award was procured by fraud.

(3) The order, decision, rule or regulation is unreasonable.

(4) If findings of fact are made, whether or not such findings of fact support the order, decision or award under review.

(*c*) The findings and conclusions of the commission on questions of fact shall be conclusive and final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the court shall enter judgment either affirming, modifying or setting aside the order, decision or award.

Digitized by Google

(*d*) The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with this act, apply to proceedings in the courts under the provisions of this section. No court of this state (except the supreme court and the district courts of appeal to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order, decision or award of the commission or to suspend or delay the operation or execution thereof, or to restrain, enjoin or interfere with the commission in the performance of its duties; *provided,* that a writ of mandamus shall lie from the supreme court or the district courts of appeal in all proper cases.

Sec. 85. (*a*) The filing of an application for a rehearing shall have the effect of suspending the order, decision, award, rule or regulation affected, in so far as the same applies to the parties to such application, unless otherwise ordered by the commission, for a period of ten days, and the commission may, in its discretion and upon such terms and conditions as it may by order direct, stay, suspend or postpone the same during the pendency of such rehearing.

(*b*) The filing of an application for, or the pendency of, a writ of review, shall not of itself stay or suspend the operation of the order, decision, award, rule or regulation of the commission subject to review, but the court before which such application is filed may, in its discretion, stay or suspend in whole or in part the operation of the order, decision, award, rule or regulation of the commission subject to review upon such terms and conditions as it may by order direct.

Sec. 86. (*a*) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(*b*) If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

(*c*) This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state

Digitized by Google

or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of congress.

Sec. 87. (*a*) Any employer, having in his employment any employee not included within the term "employee" as defined by section fourteen of this act or not entitled to compensation under this act, and any such employee, may, by their joint election, elect to come under the compensation provisions of this act in the manner hereinafter provided.

(*b*) Such election on the part of the employer shall be made by filing with the commission a written statement to the effect that he accepts the compensation provisions of this act, which, when filed, shall operate, within the meaning of section twelve of this act, to subject him to the compensation provisions of this act, and of all acts amendatory thereof, for the term of one year from the date of filing, and thereafter without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of the commission a notice in writing that he withdraws his election. Such acceptance shall not be held to include employees whose employment is both casual and not in the usual course of the trade, business, profession or occupation of the employer, unless expressly mentioned therein.

(*c*) Any employee in the service of any such employer, shall be deemed to have accepted, and shall, within the meaning of section twelve of this act, be subject to the compensation provisions of this act, and of any act amendatory thereof, if, at the time of the accident for which liability is claimed:

(1) The employer charged with such liability is subject to the compensation provisions of this act, whether the employee has actual notice thereof or not; and

(2) Such employee shall not, at the time of entering into his contract of hire, have given to his employer notice in writing that he elects not to be subject to the compensation provisions of this act; or, in the event that such contract of hire was made in advance of the election by the employer, such employee shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed his election.

Sec. 88. The commission shall, not later than the first day of

Digitized by Google

December of each calendar year, subsequent to the year 1913, make a report to the governor of the state covering its entire operations and proceedings for the previous fiscal year, with such suggestions or recommendations as it may deem of value for public information. Such report shall be printed and a copy thereof furnished to all applicants within this state.

Sec. 89. The sum of one hundred eighty-seven thousand four hundred seventy dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used by the industrial accident commission in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Sec. 90. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 91. The compensation provisions of this act shall not apply to any injury sustained prior to the taking effect thereof.

Sec. 92. This act shall take effect and be in force on and after the first day of January, A. D. 1914.

No. 11,147.

Frank C. Jordan, Secretary of State. **Frank H. Cory, Deputy.**

STATE OF CALIFORNIA.

Department of State.

I, FRANK C. JORDAN, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Senate Bill 905, Chapter 176, with the original now on file in my office, and that the same is a correct transcript

Digitized by Google

therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 18th day of June, A. D. 1913.

[SEAL]

FRANK C. JORDAN,
Secretary of State.

Digitized by Google

Digitized by Google

ROSEBERRY EMPLOYERS' LIABILITY ACT.

CHAPTER 399, LAWS OF 1911.

AN ACT relating to the liability of employers for injuries or death sustained by their employees, providing for compensation for the accidental injury of employees, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards.

The people of the State of California, represented in senate and assembly, do enact as follows:

ABROGATION OF DEFENSES.

Section 1. In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employee may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees contributed to such employee's injury; and it shall not be a defense:

(1). That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(2). That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

Sec. 2. No contract, rule or regulation, shall exempt the em-

Digitized by Google

ployer from any of the provisions of the preceding section of this act.

LIABILITY FOR COMPENSATION.

Sec. 3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employees, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1). Where, at the time of the accident, both the employer and employee are subject to the provisions of this act according to the succeeding sections hereof.

(2). Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3). Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employee.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employees from bodily injury, the employee may, at his option, either claim compensation under this act, or maintain an action for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions, of the preceding sections of this act.

Sec. 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1). The state, and each county, city and county, city, town, village and school districts and all public corporations, every person, firm, and private corporation, (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and who, at or

Digitized by Google

prior to the time of the accident to the employee for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

Sec. 5. Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the day of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

Sec. 6. The term "employee" as used in section three of this act shall be construed to mean:

(1). Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2). Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state, (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employees), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

Sec. 7. Any employee as defined in subsection (1) of the preceding section shall be subject to the provisions of this act and of

Digitized by Google

any act amendatory thereof. Any employee as defined in subsection (2) of the preceding section shall be deemed to have accepted and shall, within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(1). The employer charged with such liability is subject to the provisions of this act, whether the employee has actual notice thereof or not; and

(2). At the time of entering into his contract of hire, express or implied, with such employer, such employee shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employee shall, without giving such notice, remain in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

SCALE OF COMPENSATION.

Sec. 8. Where liability for compensation under this act exists the same shall be as provided in the following schedule:

(1) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of $100.00.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employee entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly in-

Digitized by Google

demnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subsections (a) and (b) respectively.

(d) Said subsections (a), (b) and (c) shall be subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employee.

If the period of disability does not last more than one week from the day the employee leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employee leaves work as the result of the accident, no indemnity shall be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

(3) The death of the injured employee shall not affect the obligation of the employer under subsections (1) and (2) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

(a) In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (2) of this section to make the total compensation for the injury and death, (exclusive of the benefit provided for in subsection (1), equal to three times his annual average earnings, not less than $1,000 nor more than $5,000, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employee.

(b) In case the deceased employee leaves no one wholly dependent on him for support, but one or more persons partially

Digitized by Google

dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employee; provided, that the total compensation for the injury and death, (exclusive of the benefit provided for in said subsection (1) shall not exceed three times such average annual earnings.

(c) In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employee shall die within fifteen years after the date of the accident, liability for the death benefits provided for in said subsections (a) and (b) respectively shall exist only where the accident was the approximate cause of death within said period of fifteen years.

(d) If the deceased employee leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding $100.

METHOD OF COMPUTATION.

Sec. 9. (1) The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employee; average annual earnings shall not be taken at less than $333.33, nor more than $1,666.66, and between said limits shall be arrived at as follows:

(a) If the injured employee has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employee during the days when so employed.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

Digitized by Google

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employee at the time of the injury in the employment in which he was working at such time.

(d) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

(2) The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of this section, and the weekly amount which the injured employee, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

(3) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband.

(b) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall

Digitized by Google

be divided among them according to the relative extent of their dependency.

(4) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the death of the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

NOTICE OF INJURY.

Sec. 10. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or someone in his behalf, or in case of his death, by a dependent or someone in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

EXAMINATION BY PHYSICIAN.

Sec. 11. Wherever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall

Digitized by Google

be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said Industrial Accident Board, or any member or examiner thereof. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

INDUSTRIAL ACCIDENT BOARD.

Sec. 12. Any dispute or controversy concerning compensation under this act, including any in which the State may be a party, shall be submitted to a board consisting of three members, which shall be known as the industrial accident board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

Sec. 13. The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it

Digitized by Google

necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required. It may also appoint a secretary and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed.

Sec. 14. The board shall keep its office at the city of San Francisco, and shall be provided by the secretary of state with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state the same as other general state expenses are audited and paid.

NOTICE OF HEARING.

Sec. 15. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and payroll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof,

Digitized by Google

or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the superior court of any county, or city and county.

Sec. 16. After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the party.

Sec. 17. Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with the like effect, be entered and docketed.

REVIEW BY COURT.

Sec. 18. The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: within thirty days from the date of the award, any party aggrieved thereby may file with the board an application in writing for a review of such award, stating generally the grounds upon which such review is sought; within thirty days thereafter the board shall cause all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling or another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

(1) That the board acted without or in excess of its powers.

(2) That the award was procured by fraud.

Digitized by Google

(3) That the findings of fact by the board do not support the award.

REMANDING OF RECORD.

Sec. 19. Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

Sec. 20. Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

Sec. 21. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies or transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

Sec. 22. No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation award, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

Sec. 23. A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employee shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

Digitized by Google

INSURANCE PROVISIONS.

Sec. 24. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company, which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Sec. 25. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law.

Sec. 26. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment of any assignable cause of action in tort which the employee or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

Digitized by Google

POSTING OF NOTICES.

Sec. 27. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employees, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employees.

Sec. 28. Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employee, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employee any interest which he may not divert by such settlement or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

Sec. 29. The sum of fifty thousand dollars is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be used by the industrial accident board in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time

Digitized by Google

in favor of said industrial accident board for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Sec. 30. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 31. This act shall take effect and be in force on and after the first day of September, A. D. 1911.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google